



ITG News

Keeping First Nations Informed



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Message From The Director

As I write, we have just completed the initial meetings to listen to tribal input on the development of an IRS/Tribal Consultation Policy. The 12 meetings held during the past nine months took us to every area of Indian Country. Every one of them provided us with valuable ideas and was an enriching experience. I was particularly pleased by the enthusiastic response we received from many of the participants, and the open exchange of ideas not only gave us critical information from which to begin to frame a policy, but also gave us feedback on the successes and failures of our current relationship with tribes.

I want to thank each of you that took the time to contribute to this process. I realize that many of you were not able to join us. I also realize that many of you may still wish to submit comments and share ideas. That opportunity will arise starting in late January as we embark on the second phase of the policy development process.

By January 31st we will post a summary of each of the 12 meetings on our web site at www.irs.gov/tribes. I encourage each of you to review the comments contained therein. We will incorporate a link that will enable further comments to be submitted for a 90 day period, so that everyone can provide feedback on the input from the meetings. Following that period, we will begin to create a draft Consultation Policy that will be further shared for comment as we proceed to the final stages.

Once again, thanks to everyone who has participated to date. I look forward to the continuing involvement by all interested parties as we craft a policy that best meets the needs of all parties.



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To add your name or e-mail address to our mailing list, please contact us via e-mail at gary.l.hahn@irs.gov, or call Gary Hahn at (716) 686-4862.

*Account or Tax Questions??
Call Customer Account Services
at 1-877-829-5500*



On-Line Employment Tax Guide

Employees from the office of Indian Tribal Governments recently completed a detailed Employment Tax Guide for Tribal Governments that has been posted to the ITG Internet site at www.irs.gov/tribes. The final document contains extensive narrative on withholding, deposit, and return filing requirements, as well as discussion on taxable benefits and remittance issues. Detailed examples are included as an aid to the proper completion of various forms.

We hope that this Guide is a useful reference source. We intend to update it regularly so that it remains current. We welcome your comments, as well as suggestions for further enhancements to both this on-line guide and our web site in general.

Federal Unemployment Tax

The Consolidated Appropriations Act of 2000 provided that tribal entities did not have to pay Federal Unemployment Tax (FUTA) or file Forms 940 if they participated in State Unemployment Tax (SUTA) programs under either a contributory or reimbursement basis. While SUTA participation could result in savings to tribes, the Act also mandated that the electing tribal entity remain in compliance with the state programs in order to secure relief from FUTA. Any failure to pay amounts due to the state unemployment program results in the reactivation of the requirement to pay federal unemployment tax.

While it may seem that this change is relatively simple, it has added complexities. One issue is the need for the IRS and State Unemployment agencies to exchange information on tribal participation and compliance with SUTA. An additional complexity is the need to ensure that our records accurately reflect the filing requirement for each tribal entity, and are continually updated as SUTA participation and compliance changes.

As a result of these complexities, we have encountered several situations where tribes have received IRS notices soliciting Form 940, even though they are participating in SUTA and are in full compliance. We have determined that most of these notices are in error, and we are completing steps to correct our records. We apologize for any inconvenience, but we cannot guarantee that additional errors will not occur. If your entity receives a notice regarding Form 940, but is participating in SUTA and is in full compliance, **please contact your ITG Specialist as soon as possible**. We will investigate the matter, and either make the necessary correction in our records, or advise you why the notice was received.

Our web site at www.irs.gov/tribes contains an extensive listing of Frequently Asked Questions, that may assist you in resolving issues, including employment tax questions. The site also allows for the submission of e-mail inquiries if you cannot locate an answer, or cannot reach your assigned ITG Specialist for assistance.



Tax Schemes in Indian Country

Abusive schemes to avoid taxation are a current area of focus by both the Internal Revenue Service and Congress. While tax shelters and offshore schemes have existed for several decades, they are receiving renewed interest in an era of globalization of our economy, and tight fiscal constraints for both businesses and governments.

Promoters of schemes to avoid or evade taxation have continually devised new “products” to market to anyone interested in saving money (and that will always be a large audience). In recent years, they have focused some attention on Indian tribes, with particular emphasis on exploiting their tax status as a government. The schemes include, but are not limited to:

- § joint ventures between tribes and outside parties, where income, deductions, and capital gains are not allocated between the parties during the life of the venture in the same manner as the amount of each party’s investment,
- § the misuse of sections of the law intended to benefit tribal entities, such as attempting to secure relief from FUTA by misrepresenting an entity as being tribally-owned, and
- § the misuse of tribal sovereignty or tribal enterprises to attempt to hide financial transactions from scrutiny by regulatory authorities.

If you are approached by someone who purports to have a business opportunity that is “too good to be true”, you need to be wary. Key considerations should include:

- § Is this the type of venture that governments usually enter?
- § Is the venture adequately supported by a reliable legal opinion from a disinterested third party?
- § Is the financial return equally balanced between the tribe and outside participants?
- § Is there substance to the transaction, or is it principally motivated as a tax avoidance scheme?
- § Is the promoter promising revenue to the tribe in exchange for tax savings to a third party?
- § What oversight role in the venture will the tribe have?

The office of Indian Tribal Governments wants to work with tribes to ensure that promoters of abusive schemes do not gain a foothold in Indian Country. To that end, we encourage you to contact us if you are approached by anyone promoting what appears to be an abusive scheme. We will be creating a link on our web site that will include updates on identified schemes, as well as an e-mail link to report any schemes. In the interim, you can contact Ken Voght by telephone at (716) 686-4860, or by e-mail at kenneth.g.voght@irs.gov to discuss or report schemes.

The office of Indian Tribal Governments is forming a special unit to work with tribes on this issue. Our Abuse Detection And Prevention Team welcomes the involvement of any tribal stakeholders in addressing this area, and ensuring that outside parties do not attempt to use tribal sovereignty and status as a cover for illegal or unethical activities. By partnering together in this area we can meet the interests of all governments in protecting revenues and mitigating potential problems for the future.



Indian Tribal Governments and Excise Taxes

Internal Revenue Code Section 7871 (a)(2) states that an Indian Tribal Government shall be treated as a state, and as such, is exempt from the following excise taxes:

- Excise tax on special fuels
- Manufacturers excise tax
- Communications excise tax
- Tax on use of certain highway vehicles

Fuel Taxes:

Tribal Governments are exempt from paying Federal excise taxes on special fuels, in the same manner as state and local governments, when those fuels are used to carry on “essential government functions.” For purposes of this section of the Internal Revenue Code, the term “essential government function” means any function that would customarily be performed by a state, local, or tribal government.

To purchase diesel fuel tax-free, a certificate must be filed with the vendor. Fuel can be purchased in bulk or in a single purchase. Please note that diesel fuel can only be purchased from a registered vendor, as there is no provision to claim a fuel tax credit for taxed diesel fuel used by a Tribe for essential government functions.

Gasoline may be purchased tax-free, with a certificate of exemption, only from a wholesale gasoline distributor. If the fuel is purchased tax-paid for essential government functions, a claim for refund can be filed using Form 8849. This form can be filed quarterly when the amount claimed reaches at least \$750, or in the 4th quarter of the Tribe's fiscal year. There are certain recordkeeping requirements when using Form 8849. The records should establish the following:

- The number of gallons purchased and used during the period of the claim
- The dates of purchase
- The names and addresses of the suppliers and the amounts purchased from each during the period covered by the claim
- The nontaxable use for which you used the fuel
- The number of gallons used for each nontaxable use

See IRS Publication 378, Fuel Tax Credits and Refunds, for further information.

Manufacturer's Excise Taxes and Retail Tax on Heavy Trucks:

Tribal Governments are exempt from manufacturer's excise taxes on items such as sport fishing equipment, and firearms. A complete list of tax-exempt items and more information is available in Revenue Ruling 94-81. These items must be purchased for essential government functions to be purchased tax-free. A certificate must be given to the seller signed by a tribal official to be exempt from this tax.

In addition, vehicles used in law enforcement, fire fighting, search and rescue, or other law enforcement or public safety activities are specifically exempt from a retail tax on these vehicles. The retail tax on heavy trucks is only applicable to the first sale in the United States of the truck, tractor and/or trailer.



Again, a certificate must be presented to the seller stating that the vehicle is for essential governmental service and signed by a tribal official.

Communications Excise Tax:

This excise tax is charged on telephone bills or on leased telephone systems. If the tax is being charged for phone used for essential government services, a certificate of exemption should be filed with the provider of the telephone service or system and asked to refund any excise tax collected during the year.

The exemption certificate must be signed and dated by an official of the Tribe. The certificate does not have to be renewed on a yearly basis. However, if the service provider is changed, a new certificate must be filed with that provider.

If the same provider furnishes service to non-essential government services in addition to essential government services, an allocation must be made.

Tax on Certain Highway Vehicles:

Taxable highway vehicles are, in general, those with a Gross Vehicular Weight (GVW) of 55,000 pounds or more, designed to carry a load over public highways. Vehicles used and actually operated by an Indian Tribal Government are exempt from this tax ONLY if the use is in the exercise of essential tribal government functions. Examples of types of vehicles are fire-fighting equipment, certain buses, and vehicles used in highway maintenance. Form 2290, Heavy Vehicle Use Tax Return, is NOT required to be filed on these vehicles. This exemption does not include casino shuttle buses, or other heavy vehicles not used for essential government services.

There are many situations that have not been covered here. If you have any questions, please feel free to contact your Indian Tribal Government Specialist.

Employment Tax Return Filings

The year end is upon us! Here are some reminders of important due dates for filing Employment Tax returns:

- By January 31st, deliver or mail Forms W-2, "Wage and Tax Statement," to all employees.
- By January 31st, File Form 941 for the last quarter of 2003.
- By March 1st, File Forms W-2 (Copy A) with the Social Security Administration.

For further information regarding Social Security, you may wish to access the SSA website at www.ssa.gov.

Below is a listing of where to mail your Employment Tax returns. If you have any questions, please contact the ITG Specialist assigned to your tribe.

If you are filing an annual employment tax return on behalf of an exempt organization or a government entity (federal, state, local or Indian tribal), use the following addresses, regardless of your location.		
If you are filing...	and ARE enclosing a payment, send the return to IRS at:	and are NOT enclosing a payment, send the return to IRS at:
Form 940-EZ - Employer's Annual Federal Unemployment (FUTA) Tax Return	P.O. Box 660351 Dallas, Texas 75266-0351	Ogden, Utah 84201-0047
Form 940 - Employer's Annual Federal Unemployment (FUTA) Tax Return	P.O. Box 660095 Dallas, Texas 75266-0095	Ogden, Utah 84201-0046
Form 941 - Employer's Quarterly Federal Tax Return	P.O. Box 660264 Dallas, Texas 75266-0264	Ogden, Utah 84201-0005
Form 943 - Employer's Annual Tax Return for Agricultural Employees	P.O. Box 660587 Dallas, Texas 75266-0587	Ogden, Utah 84201-0008
Form 945- Annual Return of Withheld Federal Income Tax	P.O. Box 660443 Dallas, Texas 75266-0443	Ogden, Utah 84201-0042

Federal Tax Calendar for First Quarter 2004

January 2004

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5 * Payroll date 12/27-12/30	6	7 * Payroll date 12/31-1/2	8	9 * Payroll date 1/3 -1/6	10
11	12 Employees report December tips to employer	13	14 * Payroll date 1/7 -1/9	15 ** Monthly payroll/non-payroll tax deposit for December	16 * Payroll date 1/10-1/13	17
18	19	20	21	22 * Payroll date 1/14-1/16	23 * Payroll date 1/17-1/20	24
25	26	27	28 * Payroll date 1/21-1/23	29	30 * Payroll date 1/24-1/27	31

February 2004

SUN	MON	TUE	WED	THU	FRI	SAT
1	2 Issue Forms W-2/W-2G/1099 to recipients of income	3	4 * Payroll date 1/28-1/30	5	6 * Payroll date 1/31-2/3	7
8	9	10 Employees report January tips to employer	11 * Payroll date 2/4 -2/6	12	13 * Payroll date 2/7 -2/10	14
15	16	17 ** Monthly payroll/non-payroll tax deposit for January	18	19 * Payroll date 2/11-2/13	20 * Payroll date 2/14-2/17	21
22	23	24	25 * Payroll date 2/18-2/20	26	27 * Payroll date 2/21-2/24	28
29						

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule. ** = Make a Monthly Deposit if you qualify under that rule.

7 NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

March 2004

SUN	MON	TUE	WED	THU	FRI	SAT
	1 File Forms W-3 and 1096 filed by paper or magnetic media	2	3 * Payroll date 2/25-2/27	4	5 * Payroll date 2/28-3/2	6
7	8	9	10 * Payroll date 3/3-3/5 Employees report February tips to employer	11	12 * Payroll date 3/6-3/9	13
14	15 ** Monthly payroll/non-payroll tax deposit for February	16	17 * Payroll date 3/10-3/12	18	19 * Payroll date 3/13-3/16	20
21	22	23	24 * Payroll date 3/17-3/19	25	26 * Payroll date 3/20-3/23	27
28	29	30	31 * Payroll date 3/24-3/26 File Forms W-3 and 1096 filed electronically			

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed

Return Filing Dates

By February 2

File Form 941 for the fourth quarter of 2003. If the tax was deposited in full and on time, file by February 10.

File Form 940 if not participating and compliant with State Unemployment, or not an entity 100% owned by the tribe. If the tax was deposited in full and on time, file by February 10.

File Form 730 on applicable wagers accepted during December 2003.

File Form 945 for 2003. If the tax was deposited in full and on time, file by February 10.

By March 1

File Form 730 for applicable wagers accepted during January 2004.

File Form 8027 for food and beverage establishments meeting the 80 equivalent hour test.

By March 31

For entities with Tip Rate Determination Agreement or a Gaming Industry Tip Compliance Agreement, file the annual report required by the agreement.

File Form 730 for applicable wagers accepted during February 2004.